From: Joan Eslinger
To: Microsoft ATR
Date: 1/28/02 8:13pm
Subject: Microsoft Settlement

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I am writing to express my opposition to the proposed settlement to the ongoing antitrust case between Microsoft and the U.S. Government.

I obtained a B.S. in engineering from the University of Illinois in 1981. I've worked in the computer industry in Illinois and California for most of the time since then, with experience in operating systems, networking, security, applications, and standards compliance. I'm currently employed by Silicon Graphics (SGI) as a software engineer. I have also followed this antitrust case with great interest, reading the various documents made available to the public including the findings of fact and findings of law, because I have observed Microsoft's effect on the computing landscape for the past several years.

I believe the proposed settlement will do nothing to deter Microsoft from any of its business practices which have already been proven to be predatory and to maintain and extend their monopoly. I can't imagine what possessed the USDOJ to agree to such a thing.

The settlement does not address the most important point for the survival of other operating systems: interoperability. One key way Microsoft maintains and extends their monopoly is related to the file formats produced by Microsoft's Word and Excel applications. Almost every business in this country has found itself forced to use these applications (and others) to interact with other businesses. (I understand there are also government agencies contributing to the monopoly by requiring documents be submitted in these formats, and by disseminating information in these formats). And Microsoft makes deliberate changes to the applications and their file formats periodically, often disabling backward compatibility "accidentally", to drive widespread upgrades. The best way to defeat this monopoly-maintenance mechanism would be to require Microsoft to publish these file formats so that other companies can write applications that will correctly read and write Microsoft Office documents.

This does not mean Microsoft has to expose any of their source code. I know many people have called out to require Microsoft to make their source code available. I don't believe that is a useful remedy, and Microsoft has made clear they would never agree to such a thing. Publishing file formats is nothing like opening up source code. The TCP/IP protocols that the Internet is built on are described in plain English (with some specialized jargon), and many companies have used that English description to write networking code that works with everyone else's networking code. I believe the government could make a big difference in the world of document exchange merely by specifying that all correspondence be done in openly-documented file formats.

I believe this is one of the most important requirements the goverment could insist on in this case.

The second most important problem is the secret and not-so-secret deals Microsoft makes with hardware manufacturers to ensure Microsoft products (and only Microsoft products) are available to consumers by default. One way this comes about is that almost every contract Microsoft signs with another company contains a non-disclosure clause. Microsoft uses Operating System pricing as the key in such contracts. If a company agrees to lock-out Microsoft competitors, Microsoft will lower their cost to purchase Windows. The uniform licensing terms of the proposed final judgement are a good start, but do not go far enough. There is nothing to prohibit Microsoft from making other deals that lead to a vendor receiving cash or goods or services from Microsoft if it just happens that the vendor does not offer any products from Microsoft's competitors. I'm not an accountant, but I expect it would require analysis of not just Microsoft's accounting records, but also those of the vendor's to detect such a scheme. Frankly, I don't think anything will ensure uniform pricing other than having the hardware vendors publish the cost of Microsoft's software as a line item visible to the consumer, in addition to giving the consumer the right to request a

machine with no Microsoft software for the cost of the machine without that line item. Vendors will be less likely to lie about the cost of Microsoft software if they know a consumer can knock that full amount off the price when buying a machine with no OS.

There are many, many loopholes in the agreement that I'm sure other people are writing in about, so I won't go into them in detail. The DOJ should know, however, that Microsoft is famous in the industry for writing contracts they can wriggle out of.

One such loophole I haven't seen discussed concerns the three-person Technical Committee. The committee members are required to be "experts in software design and programming." They are not required to know anything about accounting, business practices, contract law, or criminal investigation. They are permitted to hire staff members, but they also must be software experts. Several sections of the final judgement have nothing to do with software but with contracts and business relationships. Why are there no lawyers or accountants on this committee?

Here's just a short list of some of the problems I've seen in the settlement:

* Microsoft is allowed to retaliate against vendors who ship a Personal Computer with no Microsoft software.

* Microsoft is allowed to make extra payments to vendors who comply with any unofficial rules they may have (III.A.), as long as it takes the form of a payment for positive action (promotion) rather than a negative action (withholding marketing funds). Intel and Microsoft have both used the marketing funds budget over the years to promote their monopolies. The current form of the Technical Committee is unlikely to be able to police this effectively.

* Why are vendors not allowed to advertise non-Microsoft Middleware more prominently than Microsoft Middleware (III.C.3.)? Vendors should be free to configure the systems they sell any way they wish.

* III.F.2. is worthless. Most companies that work with Microsoft are at a severe competitve disadvantage if they don't sign up for co-marketing agreements. The co-marketing agreements will effectively cancel this provision.

* Microsoft should not be permitted to poison existing and future standards. Microsoft is currently investing a lot of money in network protocol design. The obvious inference is that they plan to replace the open protocols of the Internet with their own proprietary ones.

* III.H. gives Microsoft permission to pre-empt non-Microsoft middleware if there is a feature missing. Microsoft can always arrange for Microsoft Middleware to have new features not available in competitor's products (and some features, like ActiveX, deliberately avoided by other products due to security problems). By the time an ISV could add support for the new feature, the damage would already be done. This clause will not change anything.

* Microsoft can always refuse to document an API by claiming it is security-related. By the time a Technical Committee member is able to view the related code, Microsoft can change the API so that it actually does implement some security function. The free operating systems Linux and BSD, currently Microsoft's competition, will not be able to license such code.

* The definitions of "Microsoft Middleware" and "Microsoft Middleware Product" are such that Microsoft can easily work around any restrictions on them. In three years the problems will not center

around "Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors" or "Internet browsers, email client software, networked audio/video client software, instant messaging software"; they will center around elements of .Net and new applications.

* With the new subscription software model, the definitions of OS revisions, upgrades, alpha and beta periods, and distribution will change radically, to the extent that parts of the proposed final judgement will not make any sense (and will no longer apply to anything).

I hope you will take these comments under consideration when evaluating the appropriateness of the proposed settlement. I do not believe this settlement to be in the best interests of consumers or the future of computing.

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